DIRECTV U.S. DIRECTV Holdings LLC *and* International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge 947. Case 21–CA–071591

December 4, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND JOHNSON

On April 16, 2012, the National Labor Relations Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 33. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Ninth Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included three persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning,* 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on December 28, 2011, the then-Acting General Counsel[1] issued a complaint on January 11, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and by refusing to furnish requested information following the Union's certification in Case 21–RC–021191. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On January 26, 2012, the General Counsel filed a Motion for Summary Judgment. On January 27, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the Union filed a Joinder in Motion for Summary Judgment and Request for Additional Remedies.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but contests the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. In addition, the Respondent asserts that there are genuine issues of material fact as to the relevance of some of the information requested by the Union.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.[2] See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to most of the items in the Union's request for information. By letter dated December 24, 2011, the Union requested the following information from the Respondent:

1. A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and employee identification number.
2. A copy of all current company personnel policies, practices or procedures.
3. A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above.
4. A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees.
5. Copies of all current job descriptions.

[1] Although some actions in this proceeding were taken by the then-Acting General Counsel, this case is currently being litigated by the General Counsel. Therefore, all further references are to the General Counsel.

[2] Member Johnson did not participate in the underlying representation proceeding and expresses no opinion whether it was correctly decided. He agrees that the Respondent has not presented any new matters that are properly litigable in this unfair labor practice case.

6. Copies of any company wage or salary plans.
7. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the period of April 1, 2010 to present.
8. A statement and description of all wage and salary plans which are not provided under number 6 above.
9. A list of all employees who worked in the bargaining unit from April 1, 2010 to present who no longer work in the unit including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and employee identification number and termination date and last date work [sic].
10. A copy of all customer complaints made about any employee in the unit and/or any work or jobs performed by any unit employee for the period April 1, 2010 to present. Please provide a copy of all reports and all records with respect to each such complaint including any company investigatory files, memo [sic] or documents referring to each complaint.
11. A copy of and [sic] personnel rules, practices which were in existence on April 16, 2010 and which have been changed or modified in any way since that date.
12. A list of all current routes serviced by each member of the unit.
13. All job requirements for unit employees including any goals or minimum standards.
14. Any manuals or documents describing the work to be performed including any documents describing the installation and repair work done by unit members or provide [sic] to them or made available to them.
15. Any documents showing the productivity of field technicians in the unit for the period April 1, 2010 to present.
16. All evaluations of unit employees for the period January 1, 2010 to present.
17. All employee consultation forms issued with respect to any employee in the unit for the period April 1, 2010 to present.
18. All manager notes for the period of April 1, 2010 to present showing or mentioning any discipline including but not limited to verbal warnings.
19. Please [sic] the union access to the company intranet to the same degree unit employees have such access so the Union can review what material is available to all employees.

The Respondent does not object to the requests in paragraphs 1, 2, 4, 5, 6, 11, 13, and 14. With respect to the remaining requests, however, the Respondent contends that the information sought is not presumptively relevant, and relevance has not been established. The Respondent asserts that the requested information is not presumptively relevant because it relates to employees who are not part of the bargaining unit. In addition, the Respondent asserts that requests for information dating back to April 2010 are not presumptively relevant because it is "outside the six month statute of limitations for the Union to file an unfair labor practice charge or otherwise challenge any discipline issued that long ago."

It is well established that although a union's information request might not be specifically limited to bargaining unit employees and therefore could be construed as requesting information pertaining to nonunit as well as unit employees, this does not justify an employer's blanket refusal to comply with the union's request. See *Superior Protection Inc*., 341 NLRB 267, 269 (2004) (employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply to the extent it encompasses necessary and relevant information), enfd. 401 F.3d 282 (5th Cir. 2005), cert. denied 546 U.S. 874 (2005); *Streicher Mobile Fueling*, 340 NLRB 994, 995 (2003) (failure to limit request to bargaining unit information did not excuse noncompliance with request as to unit employees), affd. mem. 138 Fed. Appx. 128 (11th Cir. 2005).

In such cases, the Board will construe a request that seeks information that is otherwise presumptively relevant as pertaining to unit employees, even though the information requested is not consistently described in these specific terms. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 fn. 2 (2003) (partial denial of summary judgment on information request did not excuse failure to provide other, clearly relevant, information, which Board construed to pertain to unit employees); *Freyco Trucking, Inc*., 338 NLRB 774, 775 fn. 1 (2003) (request for payroll records and benefit fund payments construed to pertain to unit employees). Accordingly, we find that the assertion that the information request pertained to nonunit employees does not excuse the Respondent's failure to comply with the request to the extent that it could be construed to pertain to unit employees.[3] To the extent that this information request

[3] In par. 3 of the information request, the Union seeks "[a] statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above." By construing the Union's requests to pertain only to unit employees, we find that the Respondent is not obligated to produce any information in response to par. 3 to the extent that such information is duplicative of information

pertains to nonunit employees, we deny the motion for summary judgment and remand that issue to the Regional Director for further appropriate action.

In addition, because the representation election was held on April 16, 2010, the Union has represented the unit employees as of that date. We agree with the Respondent that, to the extent the information requests seek information prior to April 16, 2010, that information is not presumptively relevant, and we remand that issue to the Regional Director for further appropriate action. However, information dating back to the date of the election is presumptively relevant to the Union's role as bargaining representative. Accordingly, we construe the Union's information requests as dating back to April 16, 2010.[4]

In paragraph 10, the Union requests copies of customer complaints and reports and records relating to the complaints. It has not been established that the requested information is presumptively relevant. Accordingly, we deny summary judgment with respect to paragraph 10, and remand that issue to the Regional Director for further appropriate action.

Further, in paragraph 19, the Union requests "access to the company intranet to the same degree unit employees have such access so the Union can review what material is available to all employees." The Board has not passed on whether information posted on a company intranet is presumptively relevant, and we decline to pass on that question in this motion for summary judgment proceeding, without the benefit of a full record. Accordingly, we deny summary judgment with respect to paragraph 19 of the Union's information request, and remand that issue to the Regional Director for further appropriate action.

For the reasons set forth above, we grant the Motion for Summary Judgment and order the Respondent to bargain with the Union and to furnish the Union with the information it requested, with the exception of information pertaining to nonunit employees; information predating the election held on April 16, 2010; information relating to customer complaints, requested in paragraph 10; access to the Company's intranet, requested in paragraph 19; and information that is duplicative of information provided in response to paragraphs 1, 2, and 6, as described in footnotes 3 and 4 above.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation, with an office and place of business located at 19335 South Laurel Park Road, Rancho Dominguez, California (the facility), has been engaged in the business of providing digital television entertainment services to residential and commercial customers. During the 12-month period ending January 4, 2012, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $100,000, and purchased and received at its Rancho Dominguez, California facility goods valued in excess of $50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge 947, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on April 16, 2010, the Union was certified on December 22, 2011, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

---

provided in response to par. 2. Similarly, in par. 8 of the information request, the Union seeks "[a] statement and description of all wage and salary plans which are not provided under number 6 above." By construing the Union's requests to pertain only to unit employees, we find that the Respondent is not obligated to produce any information in response to par. 8 to the extent that such information is duplicative of information provided in response to par. 6. Moreover, should any requested document contain information unrelated to unit employees, the Respondent may redact such information.

[4] Par. 9 seeks certain information concerning employees who worked in the bargaining unit from April 1, 2010, to the present who no longer work in the unit. The Respondent asserts that summary judgment is not appropriate with respect to par. 9 because former unit employees "are not a part of the Unit" and the Union "would have to make some showing why this information is relevant." We disagree. The Board has found summary judgment appropriate and has required employers to provide information "to the extent it pertains to current or former unit employees." *Streicher Mobile Fueling*, supra, 340 NLRB at 995. See also *All Seasons Climate Control, Inc*., 347 NLRB No. 19, slip op. at 2 (2006), enfd. 236 Fed. Appx. 636 (D.C. Cir. 2007). *Mission Foods*, 345 NLRB 788, 790 fn. 5 (2005), does not require us to limit summary judgment to information concerning current unit employees. Although the *Mission Foods* Board limited the required information to that involving current employees dating back to the date of the election, the Board did so at the suggestion of the General Counsel. Here, there is no indication that the General Counsel suggested any such limitation. We find that the information requested in par. 9 is presumptively relevant and must be provided, to the extent that it seeks information about any employee employed in the unit at any time since April 16, 2010, the date of the election. To the extent that par. 9 covers employees who are still employed by the Respondent, but not in unit positions, only information concerning the time period when those employees were employed in the unit need be provided at this time. The Respondent need not, however, provide information in response to par. 9 to the extent that it is duplicative of information provided in response to par. 1 of the request.

> All full-time production installation technicians, field technicians, service technicians, piece work technicians, who service and install satellite dishes, warehouse employees, dispatchers, and quality control employees, employed by the Respondent at its facility located at 19335 South Laurel Park Road, Rancho Dominguez, CA; excluding all other employees, administrative clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

Since December 24, 2011, the Union has requested that the Respondent bargain with it, and, since December 28, 2011, the Respondent has refused to do so. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

Since December 24, 2011, the Union has requested that the Respondent furnish it with specific information, and, since December 28, 2011, the Respondent has refused to do so. The information requested by the Union, except as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal to provide necessary and relevant information constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 28, 2011, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and to furnish the Union with requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the requested information, with the exception of information pertaining to nonunit employees; information predating the election held on April 16, 2010; information relating to customer complaints, requested in paragraph 10; access to the Company's intranet, requested in paragraph 19; and information that is duplicative of information provided in response to paragraphs 1, 2, and 6, as described in footnotes 3 and 4 above.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); accord *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

The Union requests additional remedies that impose a series of extraordinary and specific conduct requirements on the Respondent. The General Counsel has not joined this request. There has been no showing that the Board's traditional remedies will not sufficiently ameliorate the effect of the refusal to bargain and information request violations committed by the Respondent. In our view, the Respondent's violations were not so numerous, pervasive, and outrageous that special or extraordinary remedies are needed to dissipate fully the coercive effect of these violations. Accordingly, we deny the Union's request for additional remedies.

ORDER

The National Labor Relations Board orders that the Respondent, DIRECTV U.S. DIRECTV Holdings LLC, Rancho Dominguez, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge 947 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time production installation technicians, field technicians, service technicians, piece work technicians, who service and install satellite dishes, warehouse employees, dispatchers, and quality control employees, employed by the Respondent at its facility located at 19335 South Laurel Park Road, Rancho Dominguez, CA; excluding all other employees, administrative clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

(b) Furnish the Union with the information requested by the Union in its letter dated December 24, 2011, with the exception of information pertaining to nonunit employees; information predating the election held on April 16, 2010; information relating to customer complaints, requested in paragraph 10; access to the Company's intranet, requested in paragraph 19; and information that is duplicative of information provided in response to paragraphs 1, 2, and 6.

(c) Within 14 days after service by the Region, post at its facility in Rancho Dominguez, California, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 28, 2011.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that this case is remanded to the Regional Director for Region 21 for further appropriate action.

Dated, Washington, D.C. December 4, 2014

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge 947 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All full-time production installation technicians, field technicians, service technicians, piece work technicians, who service and install satellite dishes, warehouse employees, dispatchers, and quality control employees, employed by the Respondent at its facility located at 19335 South Laurel Park Road, Rancho Dominguez, CA; excluding all other employees, administrative clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union with the information requested by the Union in its letter dated December 24, 2011, with the exception of information pertaining to nonunit employees; information predating the election held on April 16, 2010; information relating to customer complaints, requested in paragraph 10; access to the Company's intranet, requested in paragraph 19; and information that is duplicative of information provided in response to paragraphs 1, 2, and 6.

DIRECTV U.S. DIRECTV HOLDINGS LLC

The Board's decision can be found at www.nlrb.gov/case/21-CA-071591 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.